

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.
Northern District

DECEMBER TERM

THE STATE OF NEW HAMPSHIRE

v.

ADAM MONTGOMERY

Case No. 216-2022-CR-02372

**OPPOSITION TO MOTION TO PRECLUDE DEFENDANT'S ENCOUNTER WITH
LAW ENFORCEMENT DECEMBER 31, 2021**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and opposes the defendant's motion to preclude the defendant's December 31, 2021¹ encounter with law enforcement stating as follows:

1. The defendant was indicted for one count of second-degree murder, one count of witness tampering, and one count of falsifying physical evidence. The defendant is also charged with abuse of a corpse. The charges are based on the December 7, 2019, murder of a 5-year-old child, Harmony Montgomery, and the March 4, 2020 disposal of her corpse.

2. On August 1, 2022, the defendant filed his *Motion to Suppress Statements From December 31, 2021*. The State responded to the defendant's motion on August 25, 2022. In response, the State indicated that it "does not intend to introduce the defendant's statements made during the encounter on the morning of December 31, 2021 . . ." *State's Response to*

¹ The defendant, by way of his motion seeks to preclude the introduction of evidence of the entire encounter with law enforcement the *morning* of December 31, 2021. While the defendant's motion references December 31, 2021 generally, the State notes that the defendant had two encounters with law enforcement that day. The defendant's interaction with law enforcement during the latter of the two encounters is not properly before this court.

Defendant's Motion to Suppress Statements from December 31, 2021. In an order dated September 13, 2022, this Court granted the defendant's motion to suppress the statements he made to law enforcement on the morning of December 31, 2021.

3. The defendant, in his *Motion to Preclude Defendant's Encounter with Law Enforcement December 31, 2021* ("Def.'s Mot."), now seeks preclusion of the "entire encounter with law enforcement that morning." (Def.'s Mot. ¶ 3.)

4. As an initial matter, the defendant's *Motion to Suppress Statements From December 31, 2021* relates to statements the defendant made to officers with the Manchester Police Department on the morning of December 31, 2021. That day, Officer Stanzel was assigned to patrol the streets of Manchester. Prior to his interaction with the defendant, he was advised to "be on the look out" for Mr. Montgomery's girlfriend's vehicle "and individual to check on the condition of a child." Ofc. Stanzel's "goal in making contact with [the defendant] was to attempt to make contact with [the defendant's] daughter Harmony to check her condition as family had not seen her in approximately two years." After searching hotel parking lots, Ofc. Stanzel located the suspect vehicle on Harvell Street in Manchester. During his approach of the vehicle, and prior to interacting with the defendant, Ofc. Stanzel made observations of the defendant, who he was with, and his living situation. When Ofc. Stanzel told the defendant that he wanted to check on Harmony, the defendant "became defensive and stated that he did not want to speak to officers." During the encounter, Ofc. Stanzel observed the defendant and his general demeanor. After "[a] short time," Detective Jack Dunleavy arrived at the defendant's location and attempted to speak with him.

5. As referenced *supra*, the defendant's *Motion to Suppress Statements From December 31, 2021* relates to the suppression of his *statements*. The defendant has not, and

does not, assert that he was unlawfully arrested and/or detained on December 31, 2021. He has not, and does not, assert that the observations of the officers are in some way the fruit of the poisonous tree. Rather, the defendant asserts that “since the entire encounter was about attempting to speak to [the defendant], evidence of the entire encounter should be precluded.” (Def.’s Mot. ¶ 6.) This is a demonstrably false claim as evident from the reports, statements, and the suppressed statements themselves that the entire encounter was about locating Harmony and ensuring that she was safe. The goal of the encounter with the defendant was to “attempt to make contact with his daughter Harmony to check her condition as family had not seen her in approximately two years.” Still, the defendant incorrectly reasons that he is entitled to preclusion because “[e]vidence that there was an encounter, with the substance of the encounter not admitted, merely raises questions and causes the jury to speculate and is therefore prejudicial.” (Def.’s Mot. ¶ 6.) To do so, this court would have to infer that the substance of the encounter was his invocation. This expressly contradicts the documentation and testimony to date of the encounter. As evidenced by Ofc. Stanzel’s attached report (see State’s Exhibit 1), and discussed *supra*, the substance of the encounter was law enforcement’s observations of the defendant, his living situation, and the individual he resided with, Kelsey Small.

6. The observations made by law enforcement on the morning of December 31, 2021, are highly probative. At the time of the encounter, the defendant’s five-year-old daughter, Harmony, had not been seen for approximately two years. The defendant had previously been awarded custody of Harmony and, at the time, she should have been living under his care. It was much later that officers learned that the defendant had in fact murdered Harmony, that he abused her corpse, and that he secreted her corpse away to an unknown

location. Harmony's body has never been found. The defendant's movements, his living situation, his demeanor, and his associates in the aftermath of Harmony's murder are all highly relevant to a trial jury's duty as fact finders.

7. Additionally, the officer's observations on the morning of December 31, 2021, are not *unfairly* prejudicial. Under New Hampshire Rule of Evidence 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." The defendant asserts that law enforcement's encounter with the defendant on December 31, 2021 ". . . merely raises questions and causes the jury to speculate and is therefore prejudicial." He is mistaken as to the effect of the evidence as well as the standard for exclusion of relevant evidence. The standard that a court must apply in excluding relevant evidence under Rule 403 is whether the evidence's "probative value is substantially outweighed by the danger of *unfair* prejudice." *See* NH Rule of Evid. 403 (emphasis added).

"Unfair prejudice is not, of course, mere detriment to a defendant from the tendency of the evidence to prove guilt, in which sense all evidence offered by the prosecution is meant to be prejudicial. Rather, the prejudice required to predicate reversible error is an undue tendency to induce a decision against the defendant on some improper basis, commonly one that is emotionally charged. Among the factors we consider in weighing the evidence are: (1) whether the evidence would have a great emotional impact upon a jury; (2) its potential for appealing to a juror's sense of resentment or outrage; and (3) the extent to which the issue upon which it is offered is established by other evidence, stipulation or inference."

State v. Nightingale, 160 N.H. 569, 574 - 5 (2010) (internal citations omitted).

8. As noted above, the challenged evidence is proper as it is probative of the circumstances relating to the defendant's charged conduct; specifically, his knowledge of her disappearance, his opportunity to conceal his crime, and his living circumstances following the murder and disposal of his daughter who should have been living with him at the time of the interaction. Additionally, the defendant does not assert that any of the factors that would warrant a finding of unfair prejudice are present concerning the encounter on the morning of December 31, 2021. Finally, the evidence of the defendant's encounter with officers is unlikely to have any emotional impact upon the jury. Let alone any greater emotional impact than the charged offenses. Here, the evidence is probative to explain collateral information concerning the defendant. The jury will be presented with that information as a small piece of a larger investigation into the disappearance of Harmony Montgomery. The challenged evidence is thence not prejudicial, and it cannot be argued that it is the type of evidence that is "so inflammatory as to substantially outweigh its probative value. *State v. Costello*, 159 N.H. 113, 123 (2009).

WHEREFORE, the State respectfully requests this Honorable Court:

- A. Deny the defendant's motion to preclude the defendant's encounter with law enforcement on the morning of December 31, 2021; and
- B. Order such other and further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: December 22, 2023

/s/ Benjamin J. Agati
Benjamin J. Agati, Bar # 16161
Senior Assistant Attorney General

/s/ R. Christopher Knowles
R. Christopher Knowles, Bar #276524
Assistant Attorney General

Criminal Justice Bureau
33 Capitol Street
Concord, NH 03301-6397

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the State of New Hampshire e-filing system to Caroline Smith and Jamie Brooks, Esqs., counsel of record in this matter.

/s/ R. Christopher Knowles
R. Christopher Knowles



Manchester NH Police Department

405 Valley St, Manchester, NH 03103
603-668-8711



Case Number: 21-018997

Area hotels checked for contact

12/30/2021 21:54:05

M/O: Area hotels checked for contact

On December 30, 2021, Detectives Smith, Carter, Tucker, Heile, Macduff, and I conducted a search of area hotels for Adam Montgomery and his girlfriend Kelsey Small. Detectives checked the various hotel parking lots for Kelsey's 2006 Pontiac Grand Prix with negative results. Detectives were also able to check each hotel register for the following names:

Adam Montgomery

Kelsey Small

Adam Smith (Alias)

Adam Newhall (Alias)

Det. Smith and I checked the following hotels:

Courtyard Marriott

700 Huse Rd

Townplace Suites

686 Huse Rd

Det. Smith and I were unable to locate any of the previously mentioned names in the register.

Detectives were not able to locate Adam or Kelsey in any of the area hotels.

Detective Smith and I then responded to [REDACTED] the residence of Adam's ex, Kayla Montgomery. We were unable to locate Kelsey's vehicle in the area.

NFI/CA

STANZEL-CONTACT WITH ADAM MONTGOMERY-12/31/2021

12/31/2021 09:56:31

MO - CONTACT WITH ADAM MONTGOMERY

On 12/31/2021 at approximately 0828 I Officer Stanzel was working patrol unit 1-1 while wearing the uniform of the day, equipped with a body worn camera. I was operating a fully equipped Manchester Police Cruiser.

During our morning roll call a be on the look out was issued for the following vehicle and individual to check the condition of a child:

ADAM MONTGOMERY





Manchester NH Police Department

405 Valley St, Manchester, NH 03103
603-668-8711



Case Number: 21-018997

██████████
HOMELESS MANCHESTER

MAINE LIC/██████████

2006 PONT GRAND PRIX

BLUE

Registered to:

DOUGLAS SMALL
██████████
██████████

CARMEL, ME

Through intel it was learned that this car is associated with Adam's current girlfriend Kelsey Small.

The goal in making contact with Adam was to attempt to make contact with his daughter Harmony to check her condition as family had not seen her in approximately two years.

After checking hotel parking lots in my route with negative results, I checked a parking lot located on Harvell St. where people are known to sleep in their cars. The lot is located on the north side of the street, adjacent to the softball fields.

I drove by the parking lot and witnessed the vehicle in question. I then pulled into the parking lot across the street from the lot where the vehicle was located. I kept a visual on the vehicle and confirmed the plate through dispatch. When I initially drove by the vehicle I witnessed what appeared to be a leg up on the dash in the passenger seat, as if someone was asleep with their legs up. I waited for additional units to arrive before attempting to make contact.

Once additional units arrive I made contact with the vehicle. As I approached the vehicle I witnessed two occupants asleep inside. One in the driver seat (male), the other in the front passenger seat (female). I knocked on the window, waking the male up. I did not have any interaction with the female. I informed him to keep his hands where I can see them, and he voluntarily exited the vehicle. He verbally confirmed to me that his name is Adam Montgomery. I patted him down for weapons, to which he did not have any. He was also informed that he was being detained.

Adam appeared confused as to why Officers were waking him up and he was informed that we wanted to check on Harmony. He immediately became defensive and stated that he did not want to speak to Officers.

A short time later detectives arrived on scene to speak with Adam (see det. Dunleavy's supplement for further info). Adam remained uncooperative while speaking with Detective Dunleavy. He answered some questions but refused others.

After detectives interviewed Adam, he was cut loose and Officers cleared the scene.

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